

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES, *ex rel.* KRAH PLUNKERT,

Plaintiffs,

v.

MARYLAND BROADBAND COOPERATIVE, *et al.*,

Defendants.

Civ. No. 1:19-cv-03375-SAG

**PLAINTIFF/RELATOR KRAH PLUNKERT’S STATEMENT OF NON-OPPOSITION
TO DEFENDANT MARYLAND BROADBAND COOPERATIVE’S MOTION TO
COMPEL THE DEPARTMENT OF JUSTICE TO PRODUCE DOCUMENTS**

Plaintiff/Relator Krah Plunkert, by and through undersigned counsel, respectfully states that he does not oppose Defendant Maryland Broadband Cooperative’s¹ (“Mdbc”) Motion to Compel the Department of Justice to Produce Documents and in favor states as follows:

1. Plaintiff/Relator filed this *qui tam* action on November 25, 2019 after cooperating with the Federal Bureau of Investigation (“FBI”) in their investigation into Defendants’ fraudulent business actions against the United States Government. *See* ECF No. 1.

¹ Plaintiff/Relator objects to Defendant Mdbc’s characterization of themselves as “victims” in this matter. *See* ECF 90 at p. 2. Although Defendant received a letter from the United States Department of Justice’s Victim Notification System (“VNS”), Plaintiff/Relator notes that the VNS is an automated, computer-based system that simply serves to notify potential victims of federal crimes with information regarding court events and offender status. *See* VICTIM NOTIFICATION PROGRAM, <https://www.justice.gov/criminal/criminal-vns> (last accessed Mar. 14, 2024). Further, the causation standards in criminal and FCA cases are different, and ample evidence indicates that Defendant Mdbc engaged in violations of the FCA.

2. Plaintiff/Relator's allegations of fraud center on MDBC and Mr. Mitchell's unlawful scheme to misuse broadband infrastructure grant funds paid by the federal Government on an Award from the Naval Air Warfare Center, Aircraft Division ("the Navy") (the federal awarding agency), "for the deployment of technology supporting infrastructure; specifically world-class broadband network across the rural communities of Eastern, Southern, and Western Maryland" under Award/Contract N00421-08-2- 0001 ("PAX River Agreement"). *See* ECF No. 1 at ¶ 60-70. Plaintiff/Relator alleges that Mr. Mitchell embezzled grant funds for unauthorized expenses and improperly charged personal and unnecessary business expenses to the Government. *See* ECF No. 1 at ¶ 71-177. Plaintiff Relator further alleges that MDBC and Mitchell charged the Government for incomplete or non-existent projects and costs, fabricated invoice payments, and submitted false certifications in order to obtain payment from the Government. *See id.*

3. Additionally, Plaintiff/Relator alleges that Mr. Mitchell engaged in bid-rigging scheme with subcontractors on the PAX River Project including Bel Air Underground Services, Inc. ("Bel Air") and Pro Comm E.L.S. LLC ("Pro Comm) through their CEO, Mr. Kacher in exchange for lucrative kickback payments. *See id.* Plaintiff/Relator alleges that Mr. Mitchell also gave bribes to Mr. Kacher using federal funds in order to conceal the fraud. *See id.*

4. Finally, Plaintiff/Relator alleges that, upon his discovery of the fraud and kickback schemes led by Mr. Mitchell and subsequent reporting to the Federal Bureau of Investigation. Maryland Broadband Cooperative fired Mr. Plunkert because he blew the whistle. *See* ECF No. 1 at ¶ 178-184.

5. Plaintiff/Relator was the original source of, and provided invaluable documents and evidence to the Government for its investigation. Plaintiff/Relator did not retain copies of all

evidence provided to the Government. An example of data not retained by Plaintiff/relator includes, but is not limited to, Defendant MDBC's entire server.

6. Notably, W. Patrick Mitchell was federally indicted on April 8, 2021 in the United States District Court for the District of Maryland, Criminal No. 21-cr-0090. W. Patrick Mitchell's indictment included alleged violations of 18 U.S.C. §§ 1343, 1346, Honest Services Wire Fraud; 18 U.S.C. § 666(a)(1)(B) Bribery Concerning Programs Receiving Federal Funds; 18 U.S.C. § 666(a)(1)(A) Theft Concerning Programs Receiving Federal Funds; and Forfeiture, 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c). The trial in that matter is currently set for May 13, 2024.

7. Following the Government's declination in this action on March 29, 2023, Plaintiff/Relator Krah Plunkert proceeded with the action under the False Claims Act pursuant to 29 U.S.C. § 3730(c)(3). (*See* ECF Nos. 25; 26; 27).²

8. On November 13, 2023, Defendant MDBC issued a subpoena and *Touhy* request to the Department of Justice. *See* ECF No. 90, at p. 3. Plaintiff/Relator made similar requests on March 14, 2024.

9. Plaintiff/Relator's requests seek the production of documents, which, Plaintiff/Relator believes that the Federal Bureau of Investigation and/or the United States Department of Justice retain the sole copies of.

10. There are no other reasonable means by which Plaintiff/Relator may obtain such crucial evidence in order to prosecute the False Claims Action violations on behalf of the Government.

² Subsequently, and as required by law, Plaintiff/Relator's State claims were dismissed on May 4, 2023. *See* ECF No. 29. Defendant MDBC answered Plaintiff/Relator's Complaint on August 8, 2023 and Defendants Bel Air, Pro Comm, and Wayne Kacher, Jr. filed a Motion to Dismiss the Complaint on August 31, 2023. *See* ECF Nos. 57; 63. Plaintiff/Relator voluntarily dismissed his claims against Defendants Bel Air, Pro Comm, and Wayne Kacher, Jr. on October 16, 2023. *See* ECF No. 66. Defendant W. Patrick Mitchell answered Plaintiff/Relator's Complaint on October 2, 2023. *See* ECF No. 71

11. As noted in Plaintiff/Relator's *Touhy* requests, the parties entered into a Stipulated Order Regarding Confidentiality of Discovery Material on January 2, 2024. *See* ECF No. 82. Any production on behalf of the Government may be marked "Confidential" under the same order. Plaintiff/Relator does not object to such documents being subjected to the above order pending resolution of the criminal action against Defendant W. Patrick Mitchell.

12. Plaintiff/Relator Krah Plunkert recognizes that, though the United States declined to intervene in the False Claims Act Complaint, the United States remains a "real party in interest." *See United States ex rel. Maldonado v. Ball Homes, LLC*, 2018 U.S. Dist. LEXIS 109127, Civ. No. 5: 17-379-DCR, at *8 (E.D. Ky. June 29, 2018) (citing *Searcy v. Philips Elecs. N.A. Corp.*, 117 F.3d 154, 156 (5th Cir. 1997)). Numerous courts have held that "*Touhy*" requests should be granted when the United States is a "real party in interest." *See e.g., United States v. Walker*, No. 3:06-CV-16(CDL), 2009 U.S. Dist. LEXIS 74214, at *13-14 (M.D. Ga. Aug. 21, 2009); *Williams v. C. Martin Co., No. 07-6592 Section "H"*, 2014 U.S. Dist. LEXI 91802, at *16 (E.D. La. July 7, 2014).

13. Simply stated, Plaintiff/Relator holds a special need and status for obtaining the documents and information from the Department of Justice. The Department of Justice retains the sole copies of vital evidence that both sides require to ensure that this case is justly litigated.

14. Thus, Plaintiff/Relator does not oppose Defendant MdBC's Motion to Compel the Department of Justice to Produce Documents, and good cause exists to do so.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of March, 2024, a copy of the foregoing were mailed, via certified mail and/or received by electronic mail delivery by agreement of counsel and parties, to the following:

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